

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 7805 of 2020 with

Criminal Appeal No. 8012 of 2020 with

Criminal Appeal No. 7904 of 2020 with

Criminal Appeal No. 8097 of 2020 with

Criminal Appeal No. 7743 of 2020

Khan Muhammad Nurul Islam

.....Appellant in Cril. A. No. 7805 of 2020.

Md. Abdus Satter

..Appellant in Cril. A. No. 8012 of 2020.

Md. Ahsan Habib Kamal

.....Appellant in Cril. A. No. 7904 of 2020.

Md. Zakir Hossain

.....Appellant in Cril. A. No. 8097 of 2020.

Md. Ishak

.....Appellant in Cril. A. No. 7743 of 2020.

-Vs-

The State and another

Ms. Syeda Nasrin, Advocate with

Mr. Md. Jahidul Islam, Advocate

... For the appellant in Cril. A. No.7805 of 2020.

No one appears

... For the appellant in Cril. A. No.8012 of 2020.

Mr. H.M. Shanjid Siddique, Advocate

... For the appellant in Cril. A. No.7904 of 2020.

Mr. Golam Abbas Chowdhury, Advocate

... For the appellant in Cril. A. No.8097 of 2020

Mr. Md. Aminul Islam, Advocate

... For the appellant in Cril. A. No.7743 of 2020.

Mr. A.K.M. Farhan, Advocate

...for the respondent No.2 in all the appeals
 Mr. Md. Anichur Rahman Khan, DAG with
 Mr. Sultan Mahmood Banna, AAG with
 Mr. Mir Moniruzzaman, AAG
 .for the State

**Heard on 21.05.2025, 29.06.2025, 15.07.2025, 16.07.2025
 20.07.2025 and 21.07.2025.**

Judgment delivered on 23.07.2025

The above-mentioned criminal appeals have arisen out of the impugned judgment and order passed by the trial Court. Therefore, all the appeals were heard analogously and disposed of by this single judgment.

The above-mentioned criminal appeals are directed against the impugned judgment and order dated 09.11.2020 passed by the Special Judge, Barishal in Special Case No. 01 of 2012 arising out of Kotwali Police Station Case No. 13 dated 11.10.2000 corresponding G.R. No. 520 of 2000 (Kotwali) convicting the appellants under sections 409/420/467/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 and sentencing them under sections 409/109 of the Penal Code, 1860 to suffer rigorous imprisonment for 7 years and fine of Tk. 100,00,000 to be paid by each accused (1) Md. Ahsan Habib Kamal and (2) Md. Jakir Hossain, and fine of Tk. 1,000 to be paid by each accused (3) Md. Ishak, (4) Khan Muhammad Nurul Islam and (5) Md. Abdus Satter.

The prosecution's case, in short, is that the accused Md. Ahsan Habib Kamal (now dead) was the Chairman of Barishal

Pourashava, accused Md. Siddequr Rahman was the CEO of said Pourashava, accused Md. Khan Md. Nurul Islam was the Assistant Engineer, accused Md. Abdus Satter was the Sub-Assistant Engineer, accused Md. Ishak was the Executive Engineer, accused Md. Lutfor Rahman was the Sub-Assistant Engineer of the said Pourashava, and accused Md. Zakir Hossain was the introducer of the account opened in the name of M/S. Hai Yan Enterprise. The accused persons, creating a fake tender for repairing the roads of the Barishal Pourashva, misappropriated total Tk. 27,50,629. Before payment of the money, a fake person filed an application to the accused Md. Ahsan Habib Kamal in the name of contractor M/S. Hai Yan Enterprise for payment of the repairing costs and other accused persons in connivance with each other, after physical inspection submitted a false report regarding the repairing of the road and construction costs, and considering their reports, accused Md. Ahsan Habib Kamal, Chairman of Barishal Pourashava, and the CEO Md. Siddiquir Rahman of said Pourashava by 4 cheques paid total Tk. 39,50,000. The Sub-Assistant Engineer, Md. Bulbul Hossain of the Roads and Highway Department, after physical inspection, submitted a report on 05.06.1997 stating that the accused persons completed total repairing work of Tk. 11,99,371 of the roads of the Pourashava, and in connivance with each other, they misappropriated total Tk. 27,50,629.

Initially, informant Md. Abul Baset, an Officer of Bureau of Anti-Corruption Commission, was appointed as the investigating officer of the case. During the investigation, the then Bureau of

Anti-Corruption was abolished. Subsequently Md. M.H. Rahmat Ullah, Assistant Director, Anti-Corruption Commission, Combined District Office, Barishal, was appointed as investigating officer. During the investigation, he recorded the statement of the witnesses under section 161 of the Code of Criminal Procedure, 1898, and seized documents. After completing investigation, the investigating officer submitted charge sheet against the accused Md. Ahsan Habib Kamal, accused Khan Mohammad Nurul Islam, accused Abdus Satter, and accused Md. Ishak and Md. Zakir Hossain under sections 409/467/468/471/420/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 with prior approval of the Anti-Corruption Commission and not sent up accused Md. Siddiqur Rahman, who was the CEO of Barishal Pourashava, and accused Md. Lutfar Rahman, who was the Sub-Assistant Engineer of Barishal Pourashava.

Thereafter, the case was sent to the Senior Special Judge, Barishal, who took cognizance of the offence against the accused persons under sections 409/467/468/471/420/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 and transferred the case to the Divisional Special Judge, Barishal. During trial, charge was framed against the accused persons under sections 467/420/409/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947. Prosecution examined 20 witnesses to prove the charge against the accused persons and the defence cross-examined them. After examination of the prosecution witnesses, the accused persons

were examined under section 342 of the Code of Criminal Procedure, 1898 and the defence declined to adduce any DW but submitted documents in support of their defence. After concluding the trial, the trial court, by impugned judgment and order, convicted the accused persons and sentenced them as stated above, against which they filed the instant appeal.

P.W. 1 Md. Wahaduzzaman is the Senior Vice President of UCBL, Head Office, Dhaka. He stated that from 1992 to 1997, he was discharging his duty as an Officer of UCBL, Barishal Branch. In 1997, he was promoted to the post of Manager, and thereafter, he was transferred to Faridpur. At that time, an account of Barishal Pourashava was maintained with UCBL, Barisal Branch. On 27.10.1996 at 13.45, Inspector Md. Abdur Rashid of the Bureau of Anti-Corruption seized 5 cheques along with the statement of account. He proved the seizure list as exhibit-1 and his signature on the seizure list as exhibit-1/1. On 23.01.1997 at 11.00 am, he seized the documents mentioned in serial No. Ka to Gha of the seizure list. He proved the seizure list as exhibit-2 and his signature on the seizure list as exhibit-2/1. On 20.05.1997 at 12.00 noon, documents mentioned in serial No. Ka to Jha of the seizure list was seized, and he signed the seizure list. He proved the seizure list as exhibit-3 and his signature on the seizure list as exhibit-3/1. The seized documents were handed over to the custody of SM Jahangir Kabir, Manager of UCBL, Barishal Branch. During cross-examination, he stated that on 3 different dates, the documents were seized.

P.W. 2 S.M. Jahangir Kabir stated that from 1995 to 2000, he was discharging his duty as Manager of UCBL, Barishal Branch. On 27.10.1997, he presented the documents (which had already been exhibited). The documents were handed over to his custody. He signed the Zimmanama. He proved his signature on the Zimmanama as exhibit-1/2. He presented the documents mentioned in the seizure list dated 23.01.1997 to the officer of the Anti-Corruption Commission, who subsequently handed over those documents to his custody. He proved his signature on the Zimmanama as exhibit-2/2. He took the custody of the documents seized on 20.05.1997. He signed the seizure list. He proved his signature on the seizure list as exhibit-3/3. During cross-examination, he stated that in the seizure list dated 27.10.1996, it was mentioned that 4 cheques were seized. The Barishal City Corporation issued those cheques in favour of Hai Yan Enterprise. He affirmed that the account was maintained in the name of Hai Yan Enterprise following the banking rules.

P.W. 3 Md. Nizam Uddin was an officer of the UCBL, Head Office, Dhaka. He stated that in 1997, he was posted at UCBL, Barishal Branch. At that time, the Officer of the Anti-Corruption Commission seized documents. On 27.01.1996, he signed the seizure list. He proved his signature on the seizure list as exhibit-2/3. During cross-examination, he admitted that the then Chairman and the CEO of the Barishal Pourashava signed 4 cheques mentioned in the seizure list dated 27.10.1996.

P.W. 4 Md. Abdus Samad was a Senior Engineer (retired). He stated that while he was discharging his duty as Senior Engineer of the T&T, the then Bureau of Anti-Corruption requested him to present documents on 26.11.1996. He produced the documents mentioned in the seizure list dated 26.11.1996. He produced total of 455 pages. He compared the photocopy with the original and kept copy of those documents with the record. The documents mentioned in the seizure list (Exhibit 5) were handed over to his custody. He proved his signature on the Zimmanama as exhibit-5/1. During cross-examination, he could not say how many kilometers of the cable lines were set up. A demand for payment of Tk. 54,00,000 was made by the Barishal Pourashava for repairing the road of T&T, against which Tk. 45,00,000 was paid. On 23.05.2011, he informed that the work order for the connection of the underground telephone cable line was cancelled on 12.11.1996. The T&T completed the remaining work. He could not remember whether M/S. Hai Yan Enterprise continued the work from 1995 to 1998.

P.W. 5 Md. Zakir Hossain was an Officer of UCBL. Head Office, Gulshan, Dhaka. He stated that from 1996 to 2003, he discharged his duty as Officer of UCBL, Barishal Branch. On 12.02.2001, the Officer of the then Bureau of Anti-Corruption seized documents. He signed the seizure list (Exhibit 4). He proved his signature on the seizure list as exhibit-4/1. Defence declined to cross-examine P.W. 5.

P.W. 6 Md. Sadikur Rahman was an Officer of UCBL. He stated that from 1997 to 2002, he was posted at UCBL, Barisahl. At that time, the then Bureau of Anti-Corruption seized documents from his office. On 12.02.2001, he signed the seizure list. He proved his signature on the seizure list as exhibit-4/2. Defence declined to cross-examine P.W.6.

P.W. 7 A. Wahab Mia was an Officer of UCBL, Head Office, Dhaka. He stated that from 2000 to 2005, he discharged his duty as Officer of UCBL, Barishal. At that time, the then Bureau of Anti-Corruption seized documents. On 12.02.2001, he signed the seizure list. He proved his signature on the seizure list as exhibit-4/5. Defence declined to cross-examine P.W. 7.

P.W. 8 Md. Usman Gani was an Engineer (retired) of T&T. He stated that from 1991 to 1996, he was posted in the underground cable line project of T&T, Barishal. At that time, an Officer of the Bureau of Anti-Corruption requested him to go to the Office of the Bureau of Anti-Corruption along with the documents. Accordingly, he went there. He signed the seizure list dated 20.11.1996. He proved his signature on the seizure list as exhibit-5/2. During cross-examination, he affirmed that he was in charge of the said underground cable line project. He could not remember how many kilometers the cable lines were set up. The work order issued in favour of the Hai Yan Enterprise was canceled due to delayed performance. At the time of repairing the road on 25.02.1997, 26.02.1997, 27.02.1997, 05.04.1997, and 06.04.1997, he was not present. During cross-examination on

behalf of the accused Zakir Hossain, he admitted that Zakir Hossain was an employee of Hai Yan Enterprise. He could not say whether Zakir Hossain was appointed or not.

P.W. 9 Vhadra Kanta Mandal is the UDA (retired) of Barishal Pourashva. He stated that on 06.11.1996, he was discharging his duty as Sub-Assistant Engineer of Barishal Pourashva. On 06.11.1996 at 12.05 noon, the officer of the then Bureau of Anti-Corruption seized documents, and a seizure list was prepared. He signed the seizure list. He proved his signature on the seizure list as exhibit-6/1.

P.W. 10 Abdur Rab Nakib was an Officer (retired) of the Anti-Corruption Commission. He stated that from 1995 to 1998, he was discharging his duty as an officer of the then Bureau of Anti-Corruption, Barishal. He was appointed as inquiry officer of the ER No. 81 of 1996. At that time, he obtained the allegation regarding the setting up of a telephone cable line against the accused persons. After a preliminary inquiry, on 06.11.1996 at 12.05 noon, he prepared the seizure list (exhibit-6) and signed the seizure list. He proved his signature as exhibit-6/2. On 26.11.1996 at 3.00 pm, he prepared the seizure list (exhibit-5) and signed the seizure list. He proved his signature on the seizure list as exhibit-5/3. On 23.01.1997 at 11.00 am, he seized documents from the Office of the UCBL, Barishal. He prepared the seizure list as exhibit-2 and signed the seizure list. He proved his signature on the seizure list as exhibit-2/4. On 20.05.1999 at 12.00 noon, he seized the documents from the Office of the UCBL, Barisal

Branch. He proved the seizure list as exhibit-3 and his signature on the seizure list as exhibit-3/3. During cross-examination, he stated that he discharged his duty before the lodgment of the FIR. He affirmed that the name of the accused Md. Ahsan Habib Kamal was not mentioned in the seizure documents. He was not involved with the investigation of the case. During cross-examination, he stated that he seized documents regarding setting up the cable line of T&T. He denied the suggestion that before completion of the repairing work of the road, the FIR was lodged. He affirmed that the accused Md. Zakir Hossain was not an employee of the Pourashava or T&T. He denied the suggestion that the FIR was lodged before completing the repairing work.

P.W. 11 A.S.I. Md. Aubl Kalam Azad stated that from 1996 to 1998, he was discharging his duty as Constable of the then Bureau of Anti-Corruption, Barisal. He is a witness to the seizure list prepared on 26.11.1996 at 3.00 pm. He signed the seizure list. He proved his signature on the seizure list as exhibit-5/4.

P.W. 12 Md. Abdul Baset was the Director (former) of the Anti-Corruption Commission. He stated that on 11.10.2000, he discharged his duty as an Officer of the then Bureau of Anti-Corruption, Barishal. He lodged the FIR. He proved the FIR as exhibit-6 and his signature on the FIR as exhibit-7/1. The FIR was lodged for the misuse of power and misappropriation by cheating regarding the repair of the road of Barishal Pourashava damaged at the time of setting up the T&T cable line. The allegations were made against the five accused persons, Lutfor Rahman was a Sub-

Assistant Engineer, Barishal Pourashava, and Md. Siddiquir Rahaman was the CEO of the then Barishal Pourashava. From 1995 to 1996, total Tk. 45,00,000 was paid to Barishal Pourashava for repairing the roads of Barishal Pourashava damaged at the time of setting up the T&T cable line. The then Chairman accused Md. Ahsan Habib Kamal paid total Tk. 39,50,000 by 4 cheques to M/S. Hai Yan Enterprise. Tender was not invited for the repairing work and a work order was also not issued. During preliminary inquiry, a report was submitted by the Sub-Assistant Engineer Md. Bulbul Hossain. In the report, it has been stated that total repairing work of Tk. 11,99,371 was done, and there was no evidence of the repairing work of Tk. 27,50,629. Former Executive Engineer Md. Ishak, Sub-Assistant Engineer Abdus Satter, Lutfor Rahman and Zakir Hossain abated the accused Md. Ahsan Habib Kamal in the said misappropriation. He found that one Faruque, son of Amir Hosssain Hawlader, deposited and withdrew the said amount through the Account No. 1104 maintained in the name of Hai Yan Enterprise. During the inquiry, he did not find the existence of the said enterprise. After approval, he lodged the FIR and accused Zakir Hossain identified the account holder. During cross-examination, he stated that before lodgment of the FIR, a preliminary inquiry was conducted following the information of ER and thereafter the FIR was lodged. In the FIR, seven accused persons were named. In the FIR, he stated that M/S. Hai Yan Enterprise filed an application for payment of Tk. 25,00,000 and the Chairman Md. Ahsan Habib Kamal forwarded the said application. The employee of Barishal

Pourashva submitted report, and he approved the file to issue the cheques. He affirmed that the Chairman and CEO signed the cheques. Siddiquir Rahman was the CEO. He denied the suggestion that accused Md. Ahsan Habib Kamal was not involved with the misappropriation. The occurrence took place from 31.01.1996 to 03.06.1996. The measurement was taken in 1997 after lodgment of the FIR. The Engineer appointed by the Anti-Corruption Commission took the measurements of the construction work. He denied the suggestion that the accused Khan Mohammad Nurul Islam was not involved in the occurrence.

P.W. 13 Nazrul Islam is a businessman. He stated that he is the proprietor of Venus Electronics. Zakir Hossain introduced a person as his younger brother, and following the request of Zakir Hossain, he signed the account opening form to open the account with the UCBL, Barishal Branch. The younger brother of Zakir Hossain was not known to him. Since Zakir Hossain was known to him, he signed the account opening form of the bank. He made a statement on 20.12.2000 to Magistrate K.M. Faqrul Amin. The statement was recorded on the white paper (Exhibit 13). He signed the statement. He proved his signature on the statement as exhibit-13/1. He signed the account opening form dated 21.12.1995(exhibit-14) and his signature on the form as exhibit-14/1. Defence declined to cross-examine P.W.13.

P.W. 14 Md. Akhtaruzzaman is the owner of Star Optical, Nahar Market, and the UCBL, Barishal was situated on the first

floor. Zakir Hossain was known to him as a customer of his shop. On that day, he requested to sign the account opening form to open an account in the name of his younger brother. Accordingly, he signed the account opening form. He was not known to him. During cross-examination, he stated that since Zakir Hossain was known to him, he signed the account opening form.

P.W. 15 Nasrin was an Officer of UCBL, Barishal. He stated that from 1994 to 1998, she was discharging her duty as Officer, Grade-3B(cash) of UCBL, Barishal. At that time, after approval of the Second Officer and the Manager of the said branch, she disbursed total Tk. 39,50,000 by 9 cheques. During cross-examination, he stated that possibly those were bearer cheques. The picture and signature of the account holder are maintained with the bank. He could not say the name of the person who received the money.

P.W. 16 Durga Das Roy was the Inspector (former) of the Bureau of Anti-Corruption, Jhalakathi. He stated that from 1995 to 1999, he was posted at the then Bureau of Anti-Corruption, Jhalakathi. An inquiry committee was formed in 1997 to make an inquiry regarding the allegation made in the FIR. Possibly, a 3-member committee was formed. He was a member of the inquiry committee. He denied the suggestion that the measurement was not taken correctly. He could not remember when the repair work was started and completed.

P.W. 17 Md. Mizanur Rahman was the Manager of UCBL, Barishal Branch. He stated that by order of the court, he proved

the statement of account No. 6 maintained in the name of Barishal Pourashava mentioned in the seizure list (exhibit-1) 1 page as exhibit-8 series, 4 cheques being No. 652431-34 as exhibits-9/9(1)/9(2)/9(3). He proved 9 cheques of account No. 1104 maintained in the name of M/S. Hai Yan Enterprise with the UCBL being Cheque No. 2728052-60 as exhibits-10/10(1)/10(2)/10(3)/10(4)/10(5)/10(6)/10(7)/10(8). Defence declined to cross-examine P.W. 17.

P.W. 18 Md. Nizamul Islam was the former Panel Chairman of Barishal Pourashava. He stated that on 17.12.2000, while he was discharging his duty as Panel Chairman, he issued a certificate stating that Md. Faruk, Proprietor of M/S. Hai Yan Enterprise, son of Amir Hossain, Fakirbari, Kotwali, Barishal, was not residing at the said address. He proved the said letter as exhibit-11 and his signature on the letter as exhibit-11/1. During cross-examination, he stated that after inquiry, he submitted the certificate.

P.W. 19 M.H. Rahmat Ullah is the Investigating Officer. He stated that on 10.01.2011, while he was discharging his duty as Assistant Director of Anti-Corruption Commission, Combined District Office, Barishal, he was appointed as investigating officer of the case. Earlier, Abdul Baset, S.M. Sabbir Hossain, and AKM Zahid Hasan of the Bureau of Anti-Corruption, Barishal, investigated the case. During his investigation, he perused the documents seized by 6 seizure lists. He also recorded the statement of a few witnesses. During his investigation, the then

Sub-divisional Engineer Bulbul Hossain of the Directorate of Roads and Highway, Jhalakathi, having measured the repairing work of the roads of Barishal Pourashava, submitted a report on 05.06.1997. He proved the re-measurement report, the tabulation sheet (3 pages), and sketch measurement book as exhibit-12. During the investigation, he recorded the statements of 5 witnesses and submitted charge sheet against 5 accused persons. During cross-examination, he stated that the first investigating officer Abdul Baset was also the informant of the case. Subsequent two investigating officers did not investigate the case. He admitted that after the preliminary investigation, the final report was submitted. The FIR was lodged relying on the ER. One Mr. Nakib prepared the ER. He made the investigation regarding the ER. He admitted that he did not visit the roads or that he did not take the measurement personally. Following the documents, he submitted charge sheet. He admitted that the Chairman and the CEO of the Pourashava signed the cheques. The money cannot be withdrawn under the signature of the Chairman. The CEO of the Pourashava was the second-highest authority of the Pourashava, and the Chairman was the highest authority of the Pourashava. The previous investigating officers completed the investigation. He only did the routine job. He did not find any documents that the accused Md. Ahsan Habib Kamal himself misappropriated the amount. He denied the suggestion that the M/S. Hai Yan Enterprise did not make any allegation that the signature of M/S. Hai Yan Enterprise was forged. He did not find any document regarding the cancellation of the work order of M/S. Hai Yan

Enterprise. He denied the suggestion that the accused persons were falsely implicated in the case or that, except the recommendation to pay the bills accused Md. Abdus Satter did not do any other job regarding the misappropriation. He denied the suggestion that accused Md. Ishak did not make any recommendation to pay the bills.

P.W. 20 ABM Al Faruk was the Managing Director of M/S. Hai Yan Enterprise (Ltd. Company). He stated that the pad in the name of M/S. Hai Yan Enterprise was created by forging the seal. In the official pad of M/S. Hai Yan Enterprise, the submitted documents were not issued. The account was not maintained in the name of M/S. Hai Yan Enterprise with the UCBL. During cross-examination, he admitted that he is the Managing Director of M/S. Hai Yan Enterprise and its company obtained the work order for the underground cable line of the Barishal Pourashava. He received the bills. Possibly in 1995, he got the work order, but he could not remember the specific date. He is not aware whether, after setting up the cable line, the roads of Barishal Pourashava were repaired.

The learned Advocate Mr. H.M. Shanjid Siddique, appearing on behalf of the appellant Md. Ahsan Habib Kamal submits that during the pendency of the appeal, the accused Md. Ahsan Habib Kamal died on 30.07.2022, and the appeal so far relates to his conviction is abated. He further submits that as a Chairman of the Barishal Pourashava, he paid the repairing cost to the contractor, which has been duly received by the contractor

M/S. Hai Yan Enterprise and the roads damaged due to setting up the underground T&T cable lines were repaired, and the prosecution failed to prove any evidence that the repairing work of the roads of Barishal Pourashava was not done. The CEO of Barishal Pourashava, along with the Chairman, jointly issued the cheques, and P.W. 19 investigating officer, admitted that he did not find any documentary evidence that the accused Md. Ahsan Habib Kamal misappropriated the amount. He also submits that the report dated 05.06.1997 (exhibit-12) submitted by the Sub-Divisional Engineer Md. Bulbul Hossain of the Roads and Highway Department, Barguna, was illegally admitted in evidence without examining him as a witness and the defence did not get any opportunity of cross-examining Md. Bulbul Hossain. Therefore, the report dated 05.06.1997 (exhibit-12) illegally admitted in evidence cannot be relied on by the court to conclude as to the guilt of the accused. The prosecution failed to prove the charge against the accused beyond all reasonable doubt, and relying on the enquiry report submitted by said Bulbul Hossain (exhibit-12) the trial court illegally passed the impugned judgment and order. He prayed for setting aside the impugned judgment and order of conviction and sentence passed by the trial court.

The learned Advocate Ms. Syeda Nasrin, appearing on behalf of the appellant Khan Muhammad Nurul Islam, submits that the prosecution failed to prove any documentary evidence against the accused that he was involved in the alleged misappropriation. She further submits that the accused Khan Muhammad Nurul Islam neither issued any cheque nor received

any money of the alleged misappropriation, and the prosecution failed to prove the charge against the accused beyond all reasonable doubt. She also prayed for allowing the appeal by setting aside the impugned judgment and order passed by the trial court.

The learned Advocate Mr. Md. Aminul Islam, appearing on behalf of the appellant Md. Ishak submits that he was the former Executive Engineer and he neither issued the cheque for withdrawal any money nor did he receive any amount of the alleged misappropriation. He further submits that the CEO of the Barishal Pourashava was the Chief Executive of the Pourashava, and the investigating officer submitted the final report in favour of the CEO, who issued the cheque for withdrawal of money of alleged misappropriation, and the prosecution failed to prove the charge against the accused beyond all reasonable doubt. He also prayed for allowing the appeal by setting aside the impugned judgment and order passed by the trial court.

The learned Advocate Mr. Gulam Abbas Chowdhury, appearing on behalf of the accused Md. Zakir Hossain submits that the prosecution failed to prove any documentary evidence that the accused Md. Zakir Hossain introduced any person to open the account in the name of M/S. Hai Yan Enterprise, and there is no allegation of misappropriation of any money of the Pourashava against the accused Md. Zakir Hossain and he was falsely implicated in the case, and the prosecution failed to prove the charge against him beyond all reasonable doubt. The trial court,

without any evidence, illegally convicted the accused Md. Zakir Hossain. He prayed for setting aside the impugned judgment and order passed by the trial court.

No one appears on behalf of the accused Md. Abdus Satter in Criminal Appeal No. 8012 of 2000.

The learned Advocate Mr. A.K.M. Farhan, appearing on behalf of the respondent No. 2 (Anti-Corruption Commission) in all the appeals, submits that Tk. 45,00,000 for repairing of roads of Barishal Pourashava damaged at the time of setting up the underground T&T cable line was paid to said Pourashava by T&T and the accused persons, without repairing the roads and also without appointing any contractor, misappropriated total Tk. 27,50,000 as evident from the report dated 05.06.1996 (exhibit-12). He further submits that the report dated 05.06.1996 (exhibit-12) was proved without any objection. Therefore, the trial court committed no illegality in relying on the report (exhibit-12) submitted by the Sub-Assistant Engineer Md. Bulbul Hossain, Roads and Highway Department, Jhalakathi. The prosecution, by adducing both documentary and oral evidence, proved the charge against the accused persons beyond all reasonable doubt, and the trial court, considering the evidence of the prosecution witnesses and the defence case, legally passed the impugned judgment and order of conviction and sentence. He prayed for dismissal of the appeals.

I have considered the submission of the learned Advocates of both parties who appeared in all the appeals, perused the

evidence, impugned judgment and order passed by the trial court, and the records.

At the very outset, it is noted that after granting bail the accused Md. Ahsan Habib Kamal died and his heirs were substituted in the appeal as co-appellant Nos. 2a to 2c. Therefore, the appeal so far relates to the judgment and order of conviction passed by the trial court against the accused Md. Ahsan Habib Kamal is abated in view of the provision made in section 431 of the Code of Criminal Procedure, 1898 and the impugned judgment and order so far relates to sentence of imprisonment is required to be disposed of considering the merit of this case.

On perusal of the evidence, it reveals that by 3 cheques being Nos. 806694 dated 02.10.1995 cheque No. 1534 dated 11.02.1996 and cheque No. 1535200 dated 20.05.1996, total Tk. 45,00,000 were paid to the Barishal Pourashava for repairing the roads of Barishal Pourashava. Md. Ahsan Habib Kamal (now dead) Chairman, Barishal Pourashava, and Md. Siddiquir Rahman, CEO of Barishal Pourashava, issued 4 cheques in favour of M/S. Hai Yan Enterprise for payment of total Tk. 39,50,000 which were proved as exhibits-9/9(1)/9(2)/9(3). Thereafter, by 9 cheques being Nos. 2728052-60 exhibits (10/ 10(1) /10(2) /10(3) /10(4) /10(5)/10(6)/10(7)/10(8).) the said amounts were withdrawn by M/S. Hai Yan Enterprise.

The prosecution case is that forging the seal and official pad of the T&T, a fake tender was created and without appointing a contractor for repairing the roads of Barishal Purashava damaged

at the time of setting up the underground cable line of T&T, the accused persons opened fake Current Account No. 1104 with the UCBL, Barishal Branch in the name of M/S. Hai Yan and total Tk. 39,50,000 had been withdrawn by 9 cheques and partly repaired the roads at a cost of Tk. 11,99,371 and misappropriated total Tk. 27,60,639 in connivance with each other.

On perusal of the evidence, it appears that the report dated 05.06.1997 (exhibit-12) submitted by the Sub-Divisional Engineer Md. Bulbul Hossain, Roads and Highway Department, Jhalakathi, is the sole basis of the prosecution case. In the said report, it has been stated that the total repairing work of Tk. 11,99,371 was done. P.W. 19 investigating officer proved the said report dated 05.06.1997 as exhibit-12. Md. Bulbul Hossain, Sub-Divisional Engineer, Roads and Highway Department, Jhalakathi, was not examined in the case. No explanation has been given by the prosecution for the non-examination of said Md. Bulbul Hossain, Md. Bulbul Hossain or any other person acquainted with the signature of said Md. Bulbul Hossain is competent to exhibit the report dated 05.06.1997. P.W. 19 M.H. Rahmat Ullah stated that on 10.01.2011, he was appointed as the investigating officer of the case, and earlier, 3 other investigating officers had investigated the case. Therefore, it is crystal clear that at the time of submitting the report dated 05.06.1997, P.W. 19 was not appointed as investigating officer, and he is not acquainted with the signature of said Md. Bulbul Hossain. Therefore, investigating officer P.W. 19 is incompetent to prove the report dated 05.06.1997 (exhibit-12)

submitted by said Engineer Md. Bulbul Hossain. I am of the view that report dated 05.06.1997 was illegally admitted in evidence.

P.W. 19 stated that during his investigation, Md. Bulbul Hossain, the then Sub-Divisional Engineer, Roads and Highway Department after physical inspection and measurement of the roads, submitted a report on 05.06.1997. The said report was submitted long before his appointment on 10.01.2011 as investigating officer. Therefore, the statement made by P.W.19 that during his investigation, Md. Bulbul Hossain, Sub-Divisional Engineer, Roads and Highway, after measurement, submitted the report dated 05.06.1997 is not correct.

During cross-examination, P.W. 19 admitted that after preliminary investigation, the final report was submitted in the case. He affirmed that during the investigation, he did not take the measurement of the roads and he also did not personally verify any work, and he submitted the report based on perusal of the documents. He affirmed that his previous investigating officers completed the investigation, and he only did the routine job. He did not find any documentary evidence that the accused Ahsan Habib Kamal misappropriated any amount. It is crystal clear that earlier, 3 investigating officers investigated the case and submitted the final report. P.W. 19 admitted that the earlier investigating officers had done the full investigation, and he only completed the routine work. No reason has been assigned by P.W. 19 as to why he submitted the charge sheet against the accused persons,

although earlier final report was submitted in favour of the accused persons and he only done the routine work.

P.W. 12 Investigating Officer Md. Abdul Baset admitted that Faruque, son of Amir Hossain Hawlader, withdrew Tk. 39,50,000 through the Account No. 1104 maintained in the name of M/S. Hai Yan Enterprise, but he was not implicated as accused in the charge sheet. Relying on the report dated 05.06.1997 (exhibit-12) submitted by Sub-Divisional Engineer Md. Bulbul Hosain, the trial court convicted the accused persons but he was not examined in the case. No explanation has been given by the prosecution as to why the Engineer Md. Bulbul Hossain was not examined in the case whose report is the sole basis of the prosecution case. Therefore, an adverse presumption is drawn under section 114(g) of the Evidence Act, 1872 against the prosecution for non-examination of Md. Bulbul Hossain, Sub-Divisional Engineer, Roads and Highway Department, Jhalakathi.

It is admitted by the prosecution that the accused Ahsan Habib Kamal and the then CEO Md. Siddiquir Rahman of Barishal Pourashava issued 4 cheques in favour of M/S. Hai Yan Enterprise Ltd. P.W. 2 S.M. Jahangir Kabir, Manager UCBL, Barishal Pourashava, who discharged duty from 1995 to 2000, admitted in cross-examination that the cheques were issued by the Barishal Purashava in favour of M/S. Hai Yan Enterprise and account of M/S. Hai Yan Enterprise was opened following the rules of bank. During the investigation, the alleged signature of the account holder of Current Account No. 1104 was not sent to

the handwriting expert to ascertain that the M/S. Hai Yan Enterprise did not open the said account. It is an admitted fact that the Current Account No. 1104 was opened in the name of M/S. Hai Yan Enterprise following the banking procedure. I am of the view that the prosecution failed to prove that Current Account No. 1104 is a fake account.

Due to failure of the contractor in repairing the roads, it cannot be said that Tk. 39,50,000 paid to the contractor M/S. Hai Yan Enterprise was misappropriated by the accused persons. Furthermore, no evidence was adduced by the prosecution that the accused Khan Muhammad Nurul Islam, Abdus Satter and Md. Ishak submitted any report to pay the bills to the contractor. It is admitted that P.W. 12 Nazrul Islam and P.W. 14 Md. Akhtaruzzamn introduced to open Current Account No. 1104 in the name of M/S. Hai Yan Enterprise, with the UCBL, Barishal Branch, but they were not implicated as accused in the case. Rather, they were examined as witnesses in the case. No evidence was adduced by the prosecution against the accused Md. Zakir Hossain that he introduced any person to open the Current Account No. 1104 in the name of M/S. Hai Yan Enterprise.

It is the settled proposition that the prosecution shall prove the charge against the accused beyond all reasonable doubt. Admittedly Tk. 39,50,000 was paid to the contractor M/S. Hai Yan Enterprise by the accused Md. Ahsan Habib Kamal, Chairman of the Barishal Pourashava, and the CEO Md. Siddiqur

Rahman of said Pourashava, but the said CEO Md. Siddiquir Rahamn was not sent up in the charge sheet.

In view of the above evidence, findings, observation, and proposition, I am of the view that the prosecution failed to prove the charge against the accused persons beyond all reasonable doubt and the trial court, without correct assessment and evaluation of the evidence of the prosecution witnesses illegally passed the impugned judgment and order of conviction and sentence.

I find merit in the appeals.

In the result, all the appeals are allowed.

The impugned judgment and order of conviction and sentence passed by the trial court against the accused persons, namely, 1. Khan Muhammad Nurul Islam 2. Md. Abdus Satter 3. Md. Ahsan Habib Kamal 4. Md. Zakir Hossain and 5. Md. Ishak is hereby set aside.

The trial court awarded a fine of Tk. 100,00,000 against accused Md. Ahsan Habib Kamal and he was granted bail by this court on the condition of paying 50% of the fine amount, and after payment of Tk. 50,00,000(fifty lac), he was granted bail. Since the prosecution failed to prove the charge against the accused Md. Ahsan Habib Kamal, his heirs are entitled to get back Tk. 50,00,000 deposited by the deceased accused Md. Ahsan Habib Kamal during the pendency of the appeal.

The trial court is directed to allow the heirs of the deceased accused Md. Ahsan Habib Kamal, who were substituted as co-appellant Nos. 2a to 2c in the appeal to withdraw the said amount.

However, there will be no order as to costs.

Send down the lower Court's record at once.